

DA 95-1271

Federal Communications Commis. 1

City	Present	Channel No. Proposed
	Option I	
Littlefield, Texas	238C3	-
Wolfforth, Texas	-	238C3
Tahoka, Texas	237A	-
	Option II	
Littlefield, Texas	238C3	-
Wolfforth, Texas	-	238C3
Tahoka, Texas	237A	278A

ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before August 10, 1995, and reply comments on or before August 25, 1995, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James L. Primm
21st Century Radio Ventures, Inc.
713 Broadway
Santa Monica, California 90401
(Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on

Federal Communications Commission

DA 95-1271

behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

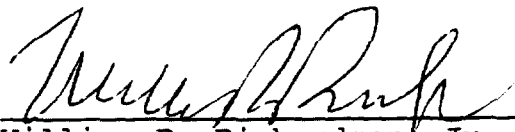
CERTIFICATE OF SERVICE

I, William R. Richardson, Jr., hereby certify that on this 8th day of November, 1995, I caused to be delivered by first class mail, postage prepaid, copies of the foregoing Supplement to Reply Comments of Lee W. Shubert, Trustee, to the following, at the addresses listed below:

James L. Primm (also sent to 530 Wilshire Boulevard
21st Century Radio Ventures, Inc. address)
713 Broadway
Santa Monica, CA 90401

*John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 8322
Washington, D.C. 20554

*Pam Blumenthal
Allocations Branch
Federal Communications Commission
2025 M Street, NW
Room 8308
Washington, D.C. 20554



William R. Richardson, Jr.

* By Hand.



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DEC 14 '95

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE
SECRETARY

In the Matter of)

Amendment of Section 73.202(b),)
Table of Allotments, FM Broadcast)
Stations (Littlefield, Wolfforth)
and Tahoka, Texas))

MM Docket
No. 95-83

To: Chief, Allocations Branch

OPPOSITION TO
"MOTION TO DISMISS SUPPLEMENT TO REPLY COMMENTS
OF LEE W. SHUBERT, TRUSTEE"
FILED BY PETITIONER 21st CENTURY RADIO VENTURES, INC.

Lee W. Shubert, Trustee, the licensee of KLLL(FM), Lubbock, Texas ("KLLL"), respectfully submits this Opposition to the Motion filed on November 30, 1995 by 21st Century Radio Ventures, Inc. ("Petitioner") to Dismiss KLLL's Supplement to its Reply Comments.

Petitioner notes that Rule 1.415(d) of the Commission's rules states that no additional comments may be filed unless authorized by the Commission. But that is precisely the authorization sought by KLLL in requesting leave to file its supplement. See Supplement n.1. Petitioner contends that KLLL's supplement adds "nothing that was not already stated" in its Reply Comments. This is demonstrably untrue. The Supplement addressed the recent filing on October 10 of Petitioner's application for an extension of its Littlefield permit -- an

event that occurred well after the end of the pleading cycle in this matter. This Supplement makes clear that Petitioner has no intention of building the Littlefield facility for which it initially applied. Indeed, based on even more recent filings, this bait-and-switch approach would appear to be a *modus operandi* for Petitioner. See Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations (Sibley, IA and Brandon, SD), filed Nov. 9, 1995 (wherein Petitioner seeks another modification of its construction permit to relocate closer to Sioux Falls, South Dakota, within 8 months after the grant of that permit); Amendment of Section 73.202(b) Table of Allotments for FM Broadcast Stations (Bagdad and Chino Valley, AZ), filed Nov. 7, 1995 (wherein Petitioner also seeks modification of its construction permit to relocate closer to Prescott, Arizona, within 12 months after the grant of that permit).

These multiple requests for modifications^{1/} render Petitioner's expressed concern for "strained Commission resources" a good deal less than credible. Indeed, they indicate that Petitioner is involved in a pattern of applying for construction permits in one community determined by the Commission to need additional FM service, representing to the Commission its readiness and intention to construct such

^{1/} KLLL has been unable to determine whether Petitioner has filed or intends to file any such additional petitions in other markets. Petitioner has filed applications for FM construction permits applications in other markets, see, e.g., Minetto Radio Partners, File No. BPH-940411MF (application returned by letter dated Dec. 15, 1994) (requesting constuction permit for Channel 293A at Minetto, New York, approximately 30 miles from Syracuse, New York). Prior to any actions in this case, the Commission should require Petitioner to provide such information.

facilities, and then promptly using that permit as a stepping-stone to abandon such proposed service to move closer to more desirable markets. This appears to be precisely the kind of "manipulation" of the table of allocations that the Commission has refused to countenance. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7096 (1990).

For the reasons set forth above, the Commission should deny Petitioner's motion to dismiss KLLL's Supplement to Reply Comments, and should deny the petition to amend Section 73.202(b) of the rules.

Respectfully submitted,

LEE W. SHUBERT, TRUSTEE


Thomas M. Clark

Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6038

Its Attorney

December 14, 1995

CERTIFICATE OF SERVICE

I, Thomas M. Clark, hereby certify that on this 14th day of December, 1995, I caused to be delivered by first class mail, postage prepaid, copies of the foregoing Opposition to Motion to Dismiss Supplement to Reply Comments of Lee W. Shubert, Trustee, to the following, at the addresses listed below:

James L. Primm
21st Century Radio Ventures, Inc.
713 Broadway
Santa Monica, CA 90401

also to: 530 Wilshire Boulevard, Suite 301
Santa Monica, CA 90401

*John A. Karousos
Chief, Allocations Branch
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Thomas M. Clark

* By Hand.

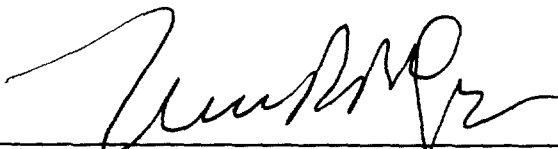
CERTIFICATE OF SERVICE

I, William R. Richardson, Jr., hereby certify that on this 8th day of July, 1996, I caused to be delivered by first class mail, postage prepaid, copies of the foregoing Comments of Lee W. Shubert, Trustee, to the following, at the addresses listed below:

James L. Primm
21st Century Radio Ventures, Inc.
713 Broadway
Santa Monica, CA 90401

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William R. Richardson, Jr.

* By Hand.